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removed from place to place as the accessible timber should become exhausted was taxable as capital, and not as real estate, under Tax Bill, Schedule C, § 8, subd. 2, as amended by Acts 1916, c. 382, providing, in clause 6, for taxation as capital of "all machinery and tools not taxed as real estate."

[Ed. Note.—For other cases, see 17 Va.-W. Va. Enc. Dig. 964.]

3. Taxation (§ 338*)—When Machinery Taxable as Real Estate.—Machinery is taxable as real estate only when so attached to the freehold as to become part of it, and to become property of owner of the land in absence of stipulation to the contrary.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 103.]

Error to Circuit Court, Buchanan County.

Action between Buchanan County and another and the W. M. Ritter Lumber Company. The circuit court entered two orders, relieving the latter from an alleged erroneous assessment of taxation, and the former bring error. Affirmed.

Ino. R. Saunders, Atty. Gen., J. D. Hank, Jr., Asst. Atty. Gen., E. Warren Wall, of Richmond, F. H. Coombs and Samuel A. Anderson, of Richmond, for plaintiffs in error.

Greever, Gillespie & Divine, of Tazewell, for defendant in error.

BOATRIGHT *v.* LITZ et al.

Sept. 17, 1919.

[100 S. E. 547.]

Appeal and Error (§ 150 (1)*)—Improvident Appeal from Subjection of Land to Judgment.—Appeal from decree dismissing suit to subject lands to satisfaction of judgment as to one of the defendants, but expressly reserving right to subject any other real estate that might be liable to the judgment, was improvidently allowed, where it did not appear that such defendant's land was primarily subject to the judgment under Code 1904, § 3575, since extent of liability of such land could not be ascertained until the land primarily liable had been sold to satisfy the judgment.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 476; 16 Va.-W. Va. Enc. Dig. 71.]

Appeal from Circuit Court, Wise County.

Suit by Boatright against J. L. Litz and others. From decree rendered, plaintiff appeals. Appeal dismissed.

Bond & Bruce and A. M. Vicars, all of Wise, for appellant.
E. M. Fulton, of Wise, for appellees.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.